

Message Text

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ACTION ARA-06

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SP-02 L-01 INR-05 CIAE-00 DODE-00 INRE-00 RSC-01

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O 101503Z NOV 74

FM AMEMBASSY PANAMA

TO SECSTATE WASHDC IMMEDIATE 2265

INFO USCINCSO IMMEDIATE

GOVERNOR PANCANAL IMMEDIATE

C O N F I D E N T I A L SECTION 1 OF 2 PANAMA 6460

LIMDIS

FROM DEPUTY NEGOTIATOR FOR BARRINGER

S/S-O PASS URGENTLY TO PHILIP BARRINGER, ISA, DEFENSE
DEPARTMENT AND TO RICHARD WYROUGH ARA/PAN

EO 11652: GDS

TAGS: PN, PFOR, PQ

SUBJ: U.S.MAPANAMA TREATY NEGOTIATIONS: SOFA NEGOTIATION

1. CONFIRMING OUR CONVERSATION BY RADIO NOVEMBER 9, PANAMA HAS EMPHASIZED THAT IT HAS NO SIGNIFICANT PROBLEMS WITH THE SUBSTANCE OF THE SOFA DRAFT AMBASSADOR BUNKER PRESENTED BUT DOES HAVE PROBLEMS WITH ITS "FORMAT". WHILE APPRECIATING THAT SOFA'S ARE STANDARD FARE AROUND THE WORLD AND THAT OTHER GOVERNMENTS ROUTINELY MANAGE TO GAIN PUBLIC ACCEPTANCE OF THEM, THIS GOVERNMENT FEARS THAT PUBLICATION OF A SOFA, COMING ON TOP OF THE CONCESSIONS PANAMA MAKES IN THE TREATY IN OTHER FIELDS, WOULD BE TOO MUCH FOR IT.

2. ACCORDINGLY THE CHIEF NEGOTIATORS AGREED TO CONSIDER A VARIANT. AT THE TIME THE TREATY IS SUBMITTED FOR RATIFICATION PROCEDURES IN BOTH COUNTRIES, THE TWO
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GOVERNMENTS WOULD

ISSUE A JOINT STATEMENT SETTING FORTH
THE PRINCIPLES RELATING TO PROTECTION AND DEFENSE OF
THE CANAL, DESIGNED TO SERVE AS GUIDANCE FOR THE COMBINED
BOARD, WHICH WOULD SUBSEQUENTLY ISSUE "REGULATIONS"
TO IMPLEMENT THEM. THESE "REGULATIONS" WOULD INCORPORATE
THE FULL TEXT OF A SOFA. PANAMA BELIEVES THAT SUCH
"REGULATIONS", ESPECIALLY COMING FROM MILITARY INSTITUTIONS, WOULD
NOT LEAD TO AN UNMANAGEABLY ADVERSE PUBLIC REACTION.

3. WE HAVE TOLD PANAMA THAT IT WOULD HAVE TO GIVE THE UNITED
STATES, IN ADVANCE, A CONFIDENTIAL COMMITMENT IN WRITING THAT
IT AGREED TO THE SOFA TEXT AND THAT ITS REPRESENTATIVE ON THE
COMBINED BOARD WOULD AGREE WITH THE UNITED STATES REPRESENTATIVE
TO ISSUE THE "REGULATIONS" EMBODYING THE SOFA.
(THIS CONFIDENTIAL COMMITMENT, TOGETHER WITH THE
SOFA TEXT, COULD BE SHOWN TO THE CONGRESS IN EXECUTIVE
SESSION AT THE TIME THE TREATY IS SUBMITTED.)

A. THE MILITARY COMMANDERS SITTING ON THE COMBINED BOARD
WOULD BE ISSUING THE "REGULATIONS" ON BEHALF
OF THEIR GOVERNMENTS SO THAT THEY WOULD HAVE A
BINDING EFFECT.

4. THE SOFA TEXT FROM WHICH THE UNITED STATES NEGOTIATORS WOULD
WORK WITH THE PANAMANIAN WOULD BE THE DOD-APPROVED
TEXT, AS AMENDED BY THE MESSAGE FROM DUSA (090055Z NOV 74).

5. SHOULD THIS VARIANT NOT WORK FOR ANY REASON, WE WOULD
TELL THE PANAMANIAN THAT THEY WOULD SOMEHOW HAD
TO SWALLOW A SOFA OR HAVE NO TREATY.

6. THERE FOLLOWS A FIRST DRAFT OF A "JOINT STATEMENT",
YOU WILL RECOGNIZE THAT WE HAVE "PANAMANIANIZED" IT WHILE
TRYING TO FIX THE OPERATING RIGHTS WE REQUIRE. YOU WILL
ALSO NOTE THAT IT HAS BEEN DONE IN CONSIDERABLE HASTE AND
WITHOUT EXPERTISE. WE WOULD HOPE TO BE ABLE TO PRESENT IT
TO THE PANAMANIAN DEPUTY NEGOTIATOR, AS AMENDED BY YOU,
ON THE MORNING OF NOVEMBER 12. UNDERSTAND THAT YOU CONSIDER IT
FEASIBLE TO BE BACK TO US WITH YOUR CHANGES BY THAT TIME.
IN ANY EVENT WE WOULD PRESENT IT AS A "FIRST, WORKING DRAFT", AT
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THE DEPUTY LEVEL.
HAVING JUST RECEIVED THE DUSA MESSAGE WE HAVE NOT HAD TIME TO
INCORPORATE FULLY THE CHANGES IT CONTAINS INTO THE DRAFT
"JOINT STATEMENT" BUT WILL DO SO IF YOU DO NOT.

7. WILL BE VERY GRATEFUL FOR YOUR COUNSEL AND GUIDANCE
AND THOSE OF L/PM AND ARA/PAN, AND VERY SORRY
ABOUT THE SHORT LEAD TIME.

8. BEGIN TEXT:

JOINT STATEMENT OF PRINCIPLES
RESPECTING THE PROTECTION AND DEFENSE OF
THE PANAMA CANAL FOR THE IMPLEMENTATION
OF ARTICLE -- OF THE TREATY OF -----.

RECOGNIZING THAT THE PANAMA CANAL IS AN INTEROCEANIC
WATERWAY WHICH CONTRIBUTES TO THE OBJECTIVE OF AN
ECONOMICALLY PROSPEROUS AND PEACEFUL WORLD AND, AS SUCH,
REQUIRES PROTECTION AND DEFENSE;

RECOGNIZING THAT, UPON THE EXPIRATION OF THE TREATY, PANAMA
SHALL ASSUME TOTAL RESPONSIBILITY FOR THE PROTECTION AND
DEFENSE OF THE CANAL AND THAT, UNTIL THE EXPIRATION OF
THE TREATY, THE UNITED STATES SHALL HAVE PRIMARY
RESPONSIBILITY FOR ITS PROTECTION AND DEFENSE;

RECOGNIZING THAT IT IS IN THE INTERESTS OF BOTH
CONTRACTING PARTIES FOR PANAMA TO PARTICIPATE INCREASINGLY
WITH THE UNITED STATES IN THE PROTECTION AND DEFENSE
OF THE CANAL, TO PREPARE FOR PANAMA'S TOTAL ASSUMPTION OF
RESPONSIBILITY THEREFORE;

RECOGNIZING THAT THE TECHNICAL ARRANGEMENTS TO BE AGREED
UPON BY THE PARTIES FOR THE PURPOSE SET FORTH IN THE
FOREGOING MUST NOT (A) VITIATE PANAMA'S RESPONSIBILITY
FOR THE DEFENSE OF ITS NATIONAL TERRITORY, (B)
PREJUDICE THE IDENTITY AND LINES OF AUTHORITY OF THE
MILITARY INSTITUTIONS OF PANAMA AND THE UNITED STATES,
(C) IMPAIR THE COMMITMENT OF THE PARTIES TO ENSURE THE
PERMANENT NEUTRALITY OF THE CANAL, NOR (D) CONSTRAIN
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THE UNITED STATES' EXERCISE OF PRIMARY RESPONSIBILITY FOR
PROTECTION AND DEFENSE OF THE CANAL DURING THE TREATY
PERIOD,

THE REPUBLIC OF PANAMA AND THE UNITED STATES OF AMERICA
ENUNCIATE THE FOLLOWING PRINCIPLES AS GUIDELINES FOR
THE TECHNICAL MILITARY ARRANGEMENTS RESPECTING THE PROTECTION
AND DEFENSE OF THE PANAMA CANAL:

I.

THE COMBINED BOARD OF SENIOR PANAMANIAN AND UNITED STATES
MILITARY REPRESENTATIVES ESTABLISHED IN ARTICLE -- OF THE
TREATY SHALL HAVE RESPONSIBILITY FOR THE EXECUTION OF THE

PRINCIPLES SET FORTH IN THIS STATEMENT AND SHALL ISSUE THE NECESSARY IMPLEMENTING REGULATIONS. THE BOARD SHALL ALSO ESTABLISH, AND PROVIDE GUIDANCE TO, A JOINT MILITARY COMMITTEE CHARGED WITH CONSULTING ON ALL MATTERS RELATING TO THE IMPLEMENTING REGULATIONS. DISAGREEMENTS WITHIN THE JOINT MILITARY COMMITTEE SHALL BE REFERRED TO THE COMBINED BOARD.

II.

BOTH PARTIES SHALL ASSUME THE OBLIGATION OF ENSURING THAT THE IMPLEMENTATION OF THE PRINCIPLES HEREIN SET FORTH DOES NOT VIOLATE THE PRINCIPLE OF "PARTNERSHIP" UNDERLYING THE TREATY NOR RELIEVE THE TWO GOVERNMENTS OF ULTIMATE RESPONSIBILITY FOR FULFILLMENT OF THE TREATY'S TERMS.

THE UNITED STATES ASSUME THE OBLIGATION OF ENSURING THAT THE MEMBERS OF THE UNITED STATES FORCES ON ACTIVE DUTY IN PANAMA, THEIR DEPENDENTS, AND UNITED STATES CIVILIANS EMPLOYED BY THOSE FORCES AND THEIR DEPENDENTS RESPECT THE LAWS OF PANAMA AND REFRAIN FROM ANY ACTIVITY INCONSISTENT WITH THE SPIRIT OF THEM.

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ACTION ARA-06

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TO SECSTATE WASHDC IMMEDIATE 2266

INFO .USCINCSO IMMEDIATE

GOVERNOR PANCANAL IMMEDIATE

C O N F I D E N T I A L SECTION 2 OF 2 PANAMA 6460

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PANAMA ASSUMES THE OBLIGATION OF ENSURING THAT ITS LAWS,

AND THE EXECUTION OF THEM, DO NOT INTERFERE WITH THE RIGHTS WHICH PANAMA HAS CONFERRED UPON THE UNITED STATES IN THE TREATY AND IN THE REGULATIONS ISSUED TO IMPLEMENT THESE PRINCIPLES.

THE UNITED STATES ASSUMES THE OBLIGATION OF ENSURING THAT THE ACTIVITIES OF UNITED STATES FORCES IN PANAMANIAN TERRITORY SHALL BE CARRIED ON WITH DUE REGARD FOR THE PUBLIC SAFETY, HEALTH AND ECONOMIC WELL-BEING OF THE PANAMA TAN PEOPLE, AND THAT THE UNITED STATES FORCES COOPERATE WITH PANAMANIAN FORCES AND OTHER APPROPRIATE AUTHORITIES OF PANAMA FOR THOSE PURPOSES.

III.

PURSUANT TO ARTICLE --- OF THE TREATY, PANAMA AGREES TO CONFER UPON THE UNITED STATES THE USE OF, AND CONTROL OVER ACCESS TO, THE AREAS AND FACILITIES SET FORTH IN THE ANNEX TO THIS STATEMENT, WHICH ALSO SETS FORTH THE TRAINING AREAS TO BE USED BY PANAMANIAN AND UNITED STATES FORCES.

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AREAS AND FACILITIES MADE AVAILABLA FOR THE USE OF UNITED STATES FORCES SHALL BE RETURNED TO PANAMA WHENEVER THEY ARE NO LONGER REQUIRED FOR THE DISCHARGE OF THE UNITED STATES PRIMARY RESPONSIBILITY UNDER THE TREATY FOR PROTECTION AND DEFENSE OF THE CANAL, AND IN CONSIDERATION OF PANAMA'S INCREASING PARTICIPATION IN PROTECTION AND DEFENSE ACTIVITIES.

IV.

PANAMA AGREES TO AFFORD TO UNITED STATES FORCES FREE MOVEMENT INTO, OUT OF, AND WITHIN ITS TERRITORY, WITH RESPECT TO VEHICLES, VESSELS AND AIRCRAFT.

PANAMA AND THE UNITED STATES SHALL TAKE ALL APPROPRIATE MEASURES TO COORDINATE AIR TRAFFIC IN ORDER TO PROVIDE FOR MAXIMUM AIR SAFETY.

PROPOSED MODIFICATIONS TO THE SYSTEM OF AIDS TO NAVIGATION OF AIRCRAFT WHICH ARE INSTALLED IN DEFENSE FACILITIES OR AREAS, OR AREAS ADJACENT THERETO, SHALL BE THE SUBJECT OF PRIOR CONSULTATION BETWEEN THE PARTIES.

V.

PANAMA AGREES TO CONFER UPON THE UNITED STATES EXEMTPIONS FROM TAXATION OF THE UNITED STATES FORCES, THEIR ACTIVITIES AND PROPERTY.

PANAMA AGREES TO PROVIDE EXEMPTIONS FROM CUSTOMS DUTIES, LICENSE REQUIREMENTS AND OTHER IMPORT LEVIES WITH RESPECT TO MATERIALS, SUPPLIES, EQUIPMENT AND OTHER PROPERTY IMPORTED FOR THE USE OF THE UNITED STATES FORCES OR THEIR CONTRACTORS.

PANAMA AGREES TO EXEMPT FROM CUSTOMS EXAMINATION (A) CARGO CONSIGNED TO THE UNITED STATES FORCES, (B) OFFICIAL UNITED STATES MILITARY MAIL, AND (C) THE LUGGAGE OF MEMBERS OF THE UNITED STATES FORCES TRAVELING ON OFFICIAL DUTY.

VI.

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PANAMA IS PREPARED TO AFFORD TO THE UNITED STATES FORCES THE USE OF PANAMANIAN PUBLIC SERVICES AND FACILITIES ON A NON-DISCRIMINATORY BASIS.

VII.

THE UNITED STATES FORCES SHALL, TO THE MAXIMUM EXTENT PRACTICABLE, AWARD CONTRACTS FOR SERVICES REQUIRED BY THEM TO CONTRACTORS ESTABLISHED IN PANAMA.

PANAMA AND THE UNITED STATES AGREE TO AFFORD TO CONTRACTORS WHO ARE UNITED STATES NATIONALS OR ARE ORDINARILY RESIDENT IN THE UNITED STATES, AND WHO ARE ENGAGED IN PERFORMING CONTRACTS FOR THE UNITED STATES FORCES, TREATMENT SIMILAR TO THAT AFFORDED TO THE UNITED STATES FORCES WITH RESPECT TO SUCH MATTERS AS CUSTOMS DUTIES, TAXATION, AND FREEDOM OF MOVEMENT, ENTRY AND DEPARTURE.

VIII.

PANAMA AGREES TO CONFER UPON THE UNITED STATES THE ABILITY TO USE, WITHOUT INTERFERENCE, SUCH ELECTRONIC SYSTEMS AS MAY BE REQUIRED FOR DEFENSE PURPOSES.

THE USE OF RADIO FREQUENCIES WILL BE A MATTER FOR COORDINATION BETWEEN THE TWO PARTIES.

PANAMA WILL PERMIT THAT THE UNITED STATES MAINTAIN, WITHIN DEFENSE FACILITIES AND AREAS, MILITARY POSTAL AND OTHER SERVICES FOR THE PERSONNEL OF THE UNITED STATES FORCES.

IX.

IT SHALL BE THE POLICY OF THE UNITED STATES FORCES TO APPLY THE FOLLOWING PRINCIPLES TO THE MAXIMUM EXTENT PRACTICABLE IN EMPLOYING CIVILIANS:

A. CONDITIONS OF EMPLOYMENT, INCLUDING AMONG OTHERS THOSE RELATING TO COMPENSATION AND OPPORTUNITY FOR ADVANCEMENT, WILL BE BASED -- WITHOUT REGARD TO NATIONALITY -- UPON MERIT,
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SENIORITY, THE NATURE OF THE WORK, AND THE PRINCIPLE OF EQUAL PAY FOR EQUAL WORK.

B. LABOR UNIONS AND OTHER EMPLOYEE ORGANIZATIONS SHALL BE AFFORDED EQUALITY OF TREATMENT IRRESPECTIVE OF THEIR PLACE OF REGISTRATION OR THE NATIONALITY OF THEIR MEMBERS.

X.

PANAMA, AS TERRITORIAL SOVEREIGN, SHALL HAVE JURISDICTION OVER UNITED STATES PERSONNEL WITH RESPECT TO OFFENSES COMMITTED WITHIN ITS TERRITORY AND PUNISHABLE UNDER ITS LAWS. THE UNITED STATES SHALL BE AFFORDED THE RIGHT TO EXERCISE WITHIN PANAMA CRIMINAL AND DISCIPLINARY JURISDICTION OVER SUCH PERSONS WITH RESPECT TO OFFENSES PUNISHABLE UNDER ITS LAWS.

WHERE AN OFFENSE IS PUNISHABLE UNDER THE LAWS OF BOTH COUNTRIES, THE COUNTRY WHICH IS TO EXERCISE JURISDICTION IN THE PARTICULAR CASE WILL BE DETERMINED IN ACCORDANCE WITH PROCEDURES TO BE ESTABLISHED BY MUTUAL AGREEMENT.

PANAMA IS PREPARED TO AFFORD GUARANTEES OF FAIR AND JUST TREATMENT OF UNITED STATES PERSONNEL WITH RESPECT TO THEIR ARREST, TRIAL OR CONFINEMENT BY THE AUTHORITIES OF PANAMA.

XI.

CLAIMS INVOLVING THE TWO GOVERNMENTS WILL BE SETTLED IN ACCORDANCE WITH MUTUAL TONUY
G PROCEDURES. UNDER SUCH PROCEDURES,
EACH SHALL RETAIN THE RIGHT TO SEEK REDRESS THROUGH
DIPLOMATIC CHANNELS.

XII.

PANAMA AGREES TO EXEMPT THE UNITED STATES FORCES FROM CERTAIN LEGAL REQUIREMENTS WITH RESPECT THE TAXATION, CUSTOMS AND IMPORT DUTIES, DOCUMENTATION CONCERNING THE POSSESSION AND OPERATION OF VEHICLES, AND THE PERFORMANCE OF PROFESSIONAL SERVICES, AS WELL AS IMMUNITY WITH RESPECT TO ACTS DONE IN THE

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PERFORMANCE OF OFFICIAL DUTIES.

XIII.

THE UNITED STATES FORCES SHALL BE RESPONSIBLE FOR THE
EXERCISE OF POLICE MEASURES TO ENSURE THE MAINTENANCE OF ORDER
AND SECURITY WITHIN DEFENSE FACILITIES AND AREAS.

END TEXT.

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